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August [[X]]

Anne Jacobson, City Attorney
City of Wausau
507 Grant St.
Wausau, WI 54403
Anne.Jacobson@ci.wausau.wi.us
VIA EMAIL

Re: Various record requests from Wausau Pilot & Review

Dear Attorney Jacobson,

I represent the Wausau Pilot & Review (“WPR”). I am concerned about the City of Wausau’s response or lack thereof to several record requests from WPR. I am writing to attempt to resolve these issues before litigation becomes necessary.

1) May 8, 2017 Request for Emails

By far the most concerning to me is the City’s failure to fulfill WPR’s May 8, 2017 request for “Copies of emails both sent and received by all Wausau City Council members and of Mayor Robert Mielke on Friday, May 12, 2017.” It has been over a year and three months, which is completely unacceptable. You have repeatedly told WPR’s editor, Ms. Shereen Siewert, that the records would be produced immediately and have failed to keep those promises (for example, in a May 14th phone call with Ms. Siewer).

You may be aware that earlier this year WILL filed suit on behalf of *The Isthmus* against the Madison Police Department for a similar delay. The judge in that case immediately issued an alternative writ of mandamus compelling the Department to either turn over the records or appear in court to explain their failure. The Department immediately capitulated and after being subject to scorn and ridicule in news outlets across the state, issued a public apology (as well as paying our court costs and attorney fees).

I am offering you the opportunity to avoid that result largely because I expect that you will be able to produce the requested records very rapidly. If the records are not produced forthwith, however, we will take the issue before a judge.

2) Multiple Requests for Development Agreement Tracking Spreadsheets

On multiple occasions, WPR has requested electronic copies of the spreadsheet that the City uses to track the progress of projects where the developer has a development agreement with the City. For example, on December 26, 2017, WPR requested “Spreadsheets representing the most current tracking database of all developer agreements with the city, including associated matrices including job creation, valuation, grants and loans.” On May 10, 2018, WPR requested (among other records) “Spreadsheets representing the most current tracking database of all developer agreements with the city, including associated matrices including job creation, valuation, grants and loans.” Their requested noted, “This is my third request for this information.”

To date, the City has failed to provide an electronic copy of the database or spreadsheet. It has provided a printed version included with agendas for formal meetings, such as on May 30, 2018. But Ms. Shereen asked for the electronic version and the City has agreed to provide an electronic version (for example in your May 14th email and in a May 31st email from Christian Schock).

There is no reason for the City to delay fulfilling this record request. WPR is asking for a single electronic file that should be readily accessible and can be sent to Ms. Shereen via email. A request like this can easily be fulfilled the same day it is made with minimal effort.

As well as providing the file to WPR immediately, the City needs to commit to providing it more rapidly in the future when requested. It is my understanding that this file is updated periodically to reflect the current status of numerous projects. As such, the file is likely significantly different today than it was on December 27, 2017, and probably even different than it was on May 11, 2018. The public is entitled to see the up-to-date snapshot at any point in order to perform meaningful oversight of the expenditure of public funds on private projects.

3) May 15, 2018 Request for Facebook Messages

On May 15, 2018, WPR requested “Copies of all Facebook messages sent by Mayor Robert Mielke from his personal Facebook account from May 15, 2017 to May 15, 2018.” The City has fulfilled the request, but I am writing to raise a concern in hopes that a similar issue does not arise in the future.

The request took almost three months to fulfill. The Open Records Law requires requests to be fulfilled “as soon as practicable and without delay.” As I’m sure you’re aware, the Attorney General considers 10 working days to be sufficient to fulfill most record requests (which is also the same time period the Governor has directed state agencies follow via executive order).

I will admit that this request was probably more complex than most, but three months was still excessive. In particular the delay between the time WPR made prepayment for location costs (June 12th) and the time the response was provided (August 6th), was far longer than is reasonable.

Conclusion

Before wrapping up I want to note that both I and my client appreciate the open and forthright way you and other City employees have communicated and largely cooperated with Ms. Siewert's record requests. That history is one of the primary reasons we are reaching out to work through these issues before going to court. We all hope that will continue in the future, for as long as there are units of local government, the media will be there asking questions, and everyone benefits from respectful communication between the two.

In conclusion, we ask the following:

- 1) That the City immediately produce the records requested May 8, 2017
- 2) That the City immediately produce an electronic copy of the spreadsheet requested on multiple occasions
- 3) That the City commit to producing electronic copies of that spreadsheet within a day or two when requested in the future
- 4) That the City commit to performing searches and redaction on a more rapid basis in the future

Please feel free to reach out to me if you have any questions. We look forward to hearing back from you.

Sincerely,

Tom Kamenick
Deputy Counsel